

DE 03-086

UNITIL ENERGY SYSTEMS, INC.

Petition for Adjustment to Stranded Cost Charge  
and Increase in Short Term Debt Limit

Order Approving Adjustment to Stranded Cost Charge

O R D E R N O. 24,188

July 2, 2003

**APPEARANCES:** Scott J. Mueller, Esq., of LeBoeuf, Lamb, Greene & MacRae, L.L.P., for Unitil Energy Systems, Inc.; Michael W. Holmes, Esq., for the Office of Consumer Advocate; Edward N. Damon, Esq., for the Staff of the New Hampshire Public Utilities Commission.

**I. PROCEDURAL HISTORY**

On April 1, 2003, Unitil Energy Systems, Inc. (UES or the Company), filed with the New Hampshire Public Utilities Commission (Commission) a Petition for Authority to Adjust the UES Stranded Cost Charge and to Issue Short-Term Debt (Petition).

On May 2, 2003, the Commission issued an order approving a temporary increase in UES' short term debt limit and setting forth a procedural schedule, *see Unitil Energy Systems, Inc.*, Order No. 24,168. Details of the procedural history of this docket through May 2, 2003 are recounted in that order and are not repeated here.

On May 7, 2003, UES and its corporate parent, Unitil Corporation (collectively, Unitil), filed a Motion for Stay,

Rehearing, and Modification of Order No. 24,168 (Motion), together with the supporting affidavit of Samuel C. Hadaway. The Motion requested three forms of relief: (i) an immediate stay of the condition in Order No. 24,168 that prohibited UES from making a dividend payment to Unitil Corporation; (ii) the modification of Order No. 24,168 to remove the condition that prohibited UES from making a dividend payment to Unitil Corporation; and (iii) an emergency rehearing on or before May 12, 2003.

By letter filed with the Commission on May 9, 2003, Unitil advised the Commission that the Office of Consumer Advocate concurred with the Motion.

On May 9, 2003, the Commission issued a secretarial letter advising the parties that pursuant to RSA 541:5, the Commission was suspending the portion of Order No. 24,168 that conditioned the Commission's approval of UES' short term debt limit upon UES not making any further dividend payments to Unitil Corporation from and after the date of that order. The Commission stated that it would soon issue an order addressing the manner in which it intended to consider the Motion.

On May 15, 2003, UES filed a Motion for Protective Order requesting confidential, protective treatment for certain information contained in UES' response to Staff data requests numbered 61, 68 and 80 regarding UES monthly financial analysis

reports, details of Unitil's lines of credit with specific outside banks, including amounts borrowed and the rates charged during the last three years, and Unitil's 2003 internal reorganization.

On May 16, 2003, the Commission issued the order referred to in the secretarial letter dated May 9, 2003, see *Unitil Energy Systems, Inc.*, Order No. 24,174. In this Order, the Commission suspended UES' proposed tariff pages included in its April 1, 2003 filing pursuant to RSA 378:6, I(b), pending the May 21, 2003 hearing and the Commission's decision thereon. The Commission also set forth a revised and restated procedural schedule which called for a hearing regarding UES' request for recovery of the fuel and purchased power balances of Unitil Power Corp. (UPC) and UES and the pending motions for protective order on May 21, 2003; a hearing regarding the short term debt limit request was set for August 12, 2003. In addition, the Commission announced its expectation that

"the level of any quarterly dividends paid by UES in the period prior to the August 12, 2003 hearing would not exceed a quarter of the annual limitation agreed to in DE 01-247 while at the same time remaining consistent with the overall goal of increasing the equity component of UES' capital structure over time."

On May 21, 2003, the Commission held a hearing regarding the under-collection recovery request and the three pending motions for protective order.

On May 22, 2003, UES filed with the Commission a revised tariff page reflecting its offer to reduce the interest rate on its stranded cost charge (SCC) to a monthly rate of two percent for the period June 1, 2003 through May 31, 2004 should the Commission approve its request to recover its fuel and purchased power under-collection over a one year period beginning on June 1, 2003. Also on May 22, 2003, Commission Staff submitted written record requests, including two record requests by the Commission, to UES in connection with reserved Exhibit 34.

On May 23, 2003, UES filed with the Commission responses to record requests marked as Exhibits 17, 21 and 33. On May 27, 2003, UES filed with the Commission responses to the written record requests marked as Exhibit 34; UES supplemented its responses to record request number 11, included in Exhibit 34, on June 2, 2003.

On June 30, 2003, UES filed the supplemental testimony of Mark H. Collin, including the UES 2003 Financing Plan, and the testimony of Samuel C. Hadaway, together with a motion for protective order requesting confidentiality for certain portions of Mr. Collin's testimony and an exhibit related to the UES 2003 Financing Plan. The information included in that filing is for consideration at the August 12, 2003 hearing in this proceeding.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. UES

UES' filing consisted of its Petition, together with the pre-filed testimony of Mark H. Collin, senior vice president, chief financial officer and treasurer of Unitil Corporation and its principal subsidiaries, including UES, Karen M. Asbury, the director of regulatory services for Unitil Service Corp. (USC), which provides services to Unitil affiliates, including UES, and Francis X. Wells, senior energy trader in the energy contracts department of USC, which provides management services to Unitil Power Corp. (UPC). Ms. Asbury and Mr. Wells testified on behalf of the Company at the hearing on May 21, 2003.

Based on a projected net under-collection of the fuel and purchased power balances for both UPC and UES of \$8,199,785 as of April 30, 2003,<sup>1</sup> UES proposed to increase the SCC rate by \$0.00696 per kilowatt hour (kWh) for twelve months, commencing on May 1, 2003, to eliminate the projected balance, with interest, at the end of April 2004. As part of the SCC, the rate would be payable by all UES distribution service customers.

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<sup>1</sup> The combined under-collection consisted of an under-collection of \$2,020,465 of interim fuel and purchased power (IFPP) expense incurred by UES and an under-collection of \$6,179,320 of fuel and purchased power expense incurred by UPC in connection with power provided by UPC to UES. Under the existing UES tariff, the final balance in the IFPP charge account as of April 30, 2003 is included in the SCC account effective May 1, 2003; under the Amended Unitil System Agreement between UES and UPC, the UPC portion of the under-collection became payable by UES to UPC after May 1, 2003.

At the May 21 hearing, UES explained that based on actual figures through April 30, 2003, the final net under-collection was \$8,555,838, consisting of an under-collection of \$1,652,587 of IFPP expense incurred by UES and an under-collection of \$6,903,251 of fuel and purchased power expense incurred by UPC. According to the Company's calculations, the final net under-collection, with interest, would be eliminated with a rate increase of \$0.00726 per kWh. Although the Company does not propose to change its request to increase the SCC rate by \$0.00696 per kWh to \$0.00726 per kWh, the Company does not waive collection of the full balance.

UPC's power purchasing activities and strategies, as described by the Company in its testimony, are summarized in the following paragraphs.

During the period November 2002 through March 2003, UPC supplied approximately 51 percent of the Company's energy requirements from UPC's portfolio of long term power contracts, 29 percent from short-term bilateral contracts, and 20 percent from the NEPOOL spot market; approximately 47 percent of UPC's purchased power costs were attributable to its long term power contracts, 23 percent to short term bilateral contracts, and 19 percent to spot market purchases. According to the Company, UPC's bilateral purchases during the period September 2002 through March 2003 saved the Company's customers, on a net "wins

and losses" basis, approximately \$800,000 compared to spot prices.

UPC has used bilateral contract purchases to protect against market volatility in the past. UPC's long term portfolio has also served as a hedge but its effectiveness is limited by the fact that billing is based in part on fuel costs over which UPC does not have direct control. From September 2002 through April 2003, UPC entered into bilateral transactions for periods of time as short as a few hours per day, to as long as three months for Monday through Friday, on-peak power.

As early as the middle of December 2002, UPC was aware that the balances it was incurring would have to be watched. UPC had previously entered into short term bilateral transactions for January and February 2003 peak power which covered its needs fairly well. Although March and April power prices were at an elevated level, UPC believed that at some point during the winter, those prices were likely to go down because that is generally a time of lower demand and lower energy prices. During January, UPC made incremental purchases for January and February in order to protect against further market volatility.

In the February time frame, although UPC was concerned about high prices, it felt that peak prices had been reached, given the levels of natural gas storage and Venezuelan crude

imports and the fact that the market had already taken into account the colder than normal weather. Although UPC made forward energy purchases for January and February, which is traditionally a time of market volatility, it did not lock in purchases for March and April, believing that purchasing power beyond February would lock in peak energy prices.

According to the Company, on February 24, 2003 there was a dramatic increase in fuel commodity prices, which prompted UPC to take a very close look at its balances. However, UPC still felt there was a strong possibility that that price level would not be sustained. According to the Company, forward prices were lower at the end of the month than at the beginning. After February 24, UPC's strategy was to make weekly bilateral purchases in order to allow for participation in downward price movements.

The Company said that when the February actual data came in during March at even a higher level of under-collection than had been previously estimated, the Company began as quickly as possible to evaluate and prepare the filing in this docket. By the end of March, the power purchase prices for April had fallen to a reasonable level and UPC decided to secure those for that month. The Company said that its power purchase strategies made sense both from a financial assurance policy perspective and from a markets perspective. In a situation where UPC was

seeing unprecedented prices of \$9 per MMBtu for natural gas for March delivery, UPC took the position that anything could happen and did what it could to provide some cost certainty and protect itself from spot prices. As May 1 approached, the volume of UPC's spot energy purchases from the ISO declined because Unitil was trying to limit its NEPOOL financial assurance policy cash requirements<sup>2</sup> after May 1.

UPC made a number of power purchases from Mirant during the March and April time period. UPC tried to get quotes from a number of companies during this period but Mirant was one of the few companies willing to quote a price for bilateral contracts. Overall, UPC's trades with Mirant were more expensive than the locational marginal prices. According to the Company, it must be remembered that the purchases were made in declining markets whereas previous purchases were made in increasing markets. Mirant was the most competitive supplier in the market at the time and the purchases from Mirant were in no way related to Unitil's selection of Mirant as the winning bidder for transition and default service.

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<sup>2</sup> NEPOOL Participants and Non-Participant transmission customers must comply with the NEPOOL financial assurance policy. In the past, UPC was able to meet its obligations with performance bonds; however, changes to NEPOOL's financial assurance policy meant that the form of performance bond used by UPC would no longer be acceptable as of May 20, 2003 and UPC would be required to post cash collateral based on the value of transactions it cleared through the market.

In order to avoid back to back rate changes on May 1, 2004,<sup>3</sup> the Company mentioned two possible alternatives, assuming the SCC adjustment became effective on June 1, 2003: (i) recalculating the rate, using an eleven month rate period, or (ii) when the Company files its SCC reconciliation for May 1, 2004, rolling the balance into its May 1, 2004 SCC, thus effectively recovering one twelfth of the balance, or approximately \$700,000, over the succeeding twelve month period. The Company stated it is not ready to commit to the second alternative at this time, though it is willing to look at it in connection with rate changes occurring on May 1, 2004.

According to UES, the record indicates that the under-collection was driven by a price spike that occurred on February 24, 2003, the date as of which the Company made a fuel and purchased power expense and recovery forecast covering the period February through April 2003. With actual data through January 2003, the Company projected a net under-collection as of April 30, 2003 of \$1,822,190, based on the original UPC forecast included in the Company's last fuel adjustment charge and purchased power adjustment charge (FAC-PPAC) filing made on September 27, 2002,<sup>4</sup> except that the administrative and general costs included in UES' distribution rates effective December 1,

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<sup>3</sup> Rate changes for the transition service charge, the SCC and the external delivery charge are already scheduled for May 1, 2004.

<sup>4</sup> See DE 02-177 and *Concord Electric Company and Exeter & Hampton Electric Company*, Order No. 24,081 (October 31, 2002).

2002 were removed from the UPC costs through April 2003, consistent with the DE 01-247 Phase II Settlement Agreement. Based on the revised February 24, 2003 forecast, however, the under-collection as of April 30, 2003 was projected to be \$6,982,737. By contrast, the Company had originally expected a net under-collection as of April 30, 2003 of only \$945,204, based on the Company's forecast included in its DE 02-177 filing submitted on September 27, 2002 and taking into account the rate design effective December 1, 2002 in which the UES distribution rate increase was to be offset by a planned under-collection of IFPP expense so that the rates effective December 1, 2002 would be revenue neutral.<sup>5</sup>

The Company stated that it passed the under-collection information to the parties in DE 01-247 within a matter of days and made its filing in this docket a little more than a month later.

According to UES, there was a trade-off in the DE 01-247 Phase II Settlement Agreement dated September 3, 2002<sup>6</sup> between (i) the opportunity for a more attractive price from the market for the divestiture of UPC's portfolio of power contracts and acquisition of transition and default service for UES' customers if certain regulatory risks were removed and

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<sup>5</sup> See Phase II portion of DE 01-247 and *Concord Electric Company and Exeter and Hampton Electric Company*, Order No. 24,072 (October 25, 2002).

<sup>6</sup> The Commission approved the Phase II Settlement Agreement in *Concord Electric Company and Exeter and Hampton Electric Company*, footnote 4 above.

restructuring was done all at once, and (ii) the risk going forward in 2003 that there could be a fluctuation in the electricity and fuels markets to which ratepayers would be exposed. UES stated that the two and three year transition service prices obtained in the restructuring solicitations did not reflect the price spike that started in February and continued for several months after that. UES also asserted that the results of that solicitation suggest that UES was reasonable in its view in February 2003 that this may not be a sustained price increase, thus justifying the Company's delay in seeking rate relief.

The Company admitted it had agreed to postpone collection of the under-recovery as part of the Phase II Settlement Agreement. However, the Company asserted that the only issue is one of timing, between recovery in 2003 or in 2004, and it stated that the dramatic increase in electricity and fuel prices does not warrant denying the Company carrying charges on the under-collection. At the May 21 hearing, the Company offered to reduce the interest rate on its SCC to a monthly rate of two percent for the period June 1, 2003 through May 31, 2004 should the Commission approve its request to recover its fuel and purchased power under-collection over a one year period.

UES rejected Staff's comment that the Company had not been forthright in the DE 01-247 Phase III hearings and denied that its presentation was affected by a concern that implementation of the restructuring might fall apart or be defeated because of a lack of consumer acceptance. It said that the record evidence does not support that conclusion. According to UES, the suggestion that the Company does not share information on a timely basis is not accurate and is not supported by the record in this proceeding or in DE 01-247.

Finally, the Company said it believed that it is in the best interests of its customers and the Company to recover the increased costs from the past winter starting June 1, 2003 because it sends better price signals to customers and avoids additional carrying costs. In its pre-filed testimony, UES also asserted that the level of the under-collection is beyond an appropriate limit for UES to carry; it said that the cash demands on UES are at a peak during the first year of restructuring which makes carrying such a large balance impractical for the Company.

Regarding its motion for confidentiality filed on April 17, 2003, UES said that it would agree to modify its request for confidentiality to include only the salary information for the terminated employees included in its response to Staff data request number 47.

Regarding its motion for confidentiality filed on April 24, 2003, UES clarified that, with respect to the short term energy purchase information sought by Staff, it was seeking protection only for energy trades made by UPC on and after April 1, and then only until July 30, at which time all the information will be treated as public information by the Federal Energy Regulatory Commission (FERC).

**B. OCA**

OCA stated the issue it was concerned about had to do with the difference between the prime rate and the actual cost of money on the under-collection. OCA said that UES had addressed that issue to its satisfaction by offering to carry the under-collection at UES' actual cost of money. OCA stated that regardless of UES' predictions about the under-collections, they were going to exist anyway. Finally, OCA supported the Company's offer based on a one year collection period, subject to review of the information to be provided by the Company in responding to the record requests marked as Exhibit 34.

OCA did not object to the three pending motions for confidentiality made by UES.

**C. Staff**

Staff asserted that because the Commission had previously warned Unitil of the necessity of doing "a better job of communicating much earlier with [UES'] ratepayers as to the direction of energy costs" in *Concord Electric Company and Exeter & Hampton Electric Company*, Order No. 23,635 (February 9, 2001) and because the Company had publicly announced in unqualified terms what the retail rate path pursuant to the Phase II Settlement Agreement would be on May 1, 2003, UES was under a heightened duty to be timely in disclosing to the Commission and the public the new rates they were seeking to charge on May 1, 2003. Staff noted that this duty relates to the prudence of management actions and quality of service. Staff said that by late February 2003 at the latest, UES had all the information upon which it could have immediately filed for recovery of the under-collection, and could have told the Commission and the public in plain and unequivocal terms of its claimed need for immediate recovery and that the original plan for a year's deferral was not feasible. Staff asserted UES did neither. Instead, according to Staff, UES (i) showed the Commission in the Phase III hearings of the Unitil restructuring docket, DE 01-247, rate paths under restructuring and business-as-usual scenarios which included a planned one year deferral under restructuring and immediate recovery under business-as-

usual, (ii) downplayed its claimed need for immediate recovery by telling the Commission that it was "monitoring" the fuel and purchased power balances and that it "may" (not "will") be necessary to file for recovery "sooner rather than later"; and (iii) announced in a March 17, 2003 press release what the "final" rates would be in unqualified terms on May 1, 2003.

Staff asserted that under the circumstances, it was possible to believe that UES' failure to be more timely in its disclosures was not inadvertent. Staff noted that an exhibit submitted in the present docket,<sup>7</sup> shows rate paths for restructuring with immediate recovery and business as usual which are remarkably similar, in contrast to the comparable exhibit from the DE 01-247 proceedings.<sup>8</sup> According to Staff, this fact, combined with the potential problem of the financial weakness of Mirant and the less than ideal rate result from the divestiture and transition service auctions, could have appeared to UES to undercut the strength of its case for restructuring in Phase III of DE 01-247.

Staff asserted that, at the very least, UES' lack of timeliness calls into question the credibility of its claim that it must have immediate recovery. Staff said that although UES

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<sup>7</sup> Exhibit No. 22, which included no deferral of the fuel and purchased power balances.

<sup>8</sup> Exhibit No. 39, which included the one year deferral of the fuel and purchased power balances under the restructuring scenario but not under the business-as-usual, no restructuring scenario.

had asserted that it was "inappropriate" for the Company to defer recovery of an \$8 million fuel and purchased power under-collection, it had not backed up the assertion by any quantitative data.

Staff said it was encouraged by the Company's offer to reduce the interest rate but questioned whether that is sufficient. Staff urged the Commission to deny the Company the opportunity to earn any carrying costs on the uncollected fuel and purchased power balances.

With respect to the under-collection itself, Staff said the Commission should authorize its recovery, but consider a longer recovery period than the one year period proposed, particularly given the bill impacts on the G-1 customer class (large commercial and industrial customers) and residential customers. Staff said that pursuant to the Phase II Settlement Agreement in DE 01-247, the Company committed to recover its under-collection beginning in May 2004.

Regarding the motions for confidentiality, Staff objected to confidentiality for information included in response to DR 47 other than the salary information. Staff did not object to the motion for confidentiality filed on April 24, 2003 as clarified by UES and did not object to the motion for confidentiality filed on May 15, 2003.

### **III. COMMISSION ANALYSIS**

#### **A. Fuel And Purchased Power Under-Collection**

In support of its request for an upward adjustment to the SCC, the Company says that the \$8.556 million under-collection was incurred due to an unexpected, dramatic increase in fuel and electricity prices and is too large for the Company to carry for a year. It also asserts that immediate collection is in customers' best interests because it would send "appropriate price signals" to customers and avoid the payment of interest over an extended period, thus being the least cost alternative. Further, the Company maintains that as a matter of ratemaking equity and economic efficiency, immediate collection rather than deferral of the under-recovery is preferable because costs that are incurred in a given period should be recovered from the same customers in that period; a longer recovery could result in future customers paying for that under-collection.

The proceedings in Unitil's restructuring docket, DE 01-247, provide context for understanding the issues presented in this portion of the present docket. Pursuant to the Phase II Settlement Agreement, UES committed to postpone collection of its fuel and purchased power balances for one year, until May 1, 2004, in order to achieve an approximate one percent overall retail rate reduction on May 1, 2003. Consistent with that commitment, in its Phase III on March 5, 2003, the Company

presented Exhibit 39 which compared a business-as-usual rate path with its proposed restructuring rate path in part based on the assumption of deferring the collection of a \$7 million underrecovery under restructuring until May 1, 2004. The exhibit demonstrated that customers would experience lower rates under the restructuring scenario with the one-year deferral than under the business-as-usual scenario. In addition, in the last FAC-PPAC docket, DE 02-177, the Company's witness stated that even "significant" under-collection of balances would have "no impact" on the rates that were envisioned in the Phase II Settlement Agreement. See DE 02-177, Hearing Transcript of October 23, 2002 at 31-32. Furthermore, the Company's 2002 Report to Customers, see Exhibit 16, which it sent to customers in October 2002 after we had approved the Phase II Settlement Agreement in public deliberations, stated that, effective on Choice Date, "overall rates will decline about 1%."

At the May 21 hearing, on the other hand, a Company witness said Company management "very strongly believed that there was never a commitment on the Company's part to not recover or to significantly defer large amounts of costs, should market changes happen." See Hearing Transcript of May 21, 2003 (Tr.) at 133. The same witness also said the concept of "no increase in rates" was appropriately caveated by the phrase

"subject to potential changes in the spot market between the December time frame and May implementation." *Id.* at 134.

The issue is whether the Company should be permitted to collect additional stranded costs prior to May 1, 2004. One of the factors we must consider is the Company's conduct in February and March 2003 after it projected a \$7 million under-collection would exist as of April 30, 2003, based on its updated, February 24, 2003 forecast.

When the Company submitted its Phase III final report on the portfolio auction and the solicitation for transition and default service supply (Final Report) on February 27, 2003, the Company knew, based on actual figures, that the net, cumulative under-collection of UPC and UES through January was \$2,962,131, compared to an originally forecasted amount of \$2,071,361 through January 2003, or a negative variance of almost \$900,000. See Exhibit No. 28, page 5. Thus, as of late February, based on the trends of market prices for electricity, natural gas and crude oil, the Company's September 27, 2002 forecast was outdated. See Exhibit 1, pages 58-60 (FXW-5A, -B, and -C, forecast versus actuals/updated forecast NEPOOL average spot energy prices, NYMEX natural gas futures settlement prices, and NYMEX crude oil futures prices, respectively, during the period August 2002 through mid-April 2003); see also Exhibits 14 and 15 (average NYMEX natural gas futures prices during the period

August 26, 2002 through February 24, 2003, and forward peak power prices for March and April 2003, respectively).

The Company's updated, February 24, 2003 forecast projected an under-collection of almost \$7 million at the end of April, almost four times larger than the \$1.8 million projected amount using the Company's original, outdated forecast. At that time, Company management thought the amount of the projected \$7 million under-collection amount was so large that it was "obvious" the Company could not defer collection for a year and no evaluation of the Company's ability to carry such a large balance was necessary. See Tr. at 60-61. Nevertheless, the Company waited for more than a month before deciding to file a request for an adjustment to the SCC.

The Company discussed the estimated \$7 million under-collection at the Phase III hearing on March 5, 2003. Regarding the timing of collection, a Company witness testified:

"Consistent with the...discussions in Phase II, we assumed that the fuel and purchased power balances would be zero as of April 30th, 2003. And,...what I'm showing here in this attachment [Attachment V,B to the Final Report regarding bill impacts from restructuring] is the proposed rates for effect on May 1, 2003. The intent would be that any over/underrecoveries would be reconciled in the second year, and they would be included in the Stranded Cost Charge in year two.

However, I will note that...based upon current market conditions, these balances are more than we anticipated, and it may be appropriate for the Company to seek recovery sooner, rather than later. And, it's something that we...continue to monitor these balances on a monthly basis,

and would...need to address recovery of that at the appropriate time." Tr. at pages 63-64.

At the May 21, 2003 hearing, Company management stated that in late February it had been alarmed that the \$1.8 million underrecovery had grown to \$7 million. The Company testified that it decided not to file for an adjustment to the SCC until after it received and reviewed the actual figures for February in March.

The Company testified in May that the February date used for the forecast was a day when an "extreme price spike" in electricity and fuel prices occurred, thereby implying that the Company believed the price was an aberration. See e.g., Tr. at 28, 130, 142-143, 145, 164.<sup>9</sup> The Company also said it hoped there was a lag in the billing and it would see increased revenues from usage during a very cold winter. See Tr. at 130. Finally, the Company suggested that the results of the two and three-year transition service solicitations demonstrate the reasonableness of the Company's view in February that the price increases might not be sustained. See Tr. at 164.

We heard nothing in the March hearings to suggest that February 24, 2003 was an aberration. To conclude that February 24 was a unique price spike, we would at least have had to have

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<sup>9</sup>In addition, according to the Company, in December 2002 it was of the view that, although the March and April forward prices were at an elevated level, they were likely to go down because March and April are generally a time of lower demand and lower energy prices. See Tr. at 41.

seen the graph in Exhibit 14 carried out through March 5, when the under-collection was discussed during the Phase III hearings, yet it and Exhibit 15 end abruptly on February 24. In any event, the Company admitted that, as of February 24, 2003, May and June forward prices had also increased. See Tr. at 84. Overall, the graphs depict a sustained trend of increasing prices during the winter.

The G-1 and non-G-1 transition service solicitations were for two and three-year periods, respectively. Certainly, the February 26, 2003 solicitation results reflected a more optimistic view of the future than the markets seemed to indicate in February, but that view was for much longer time periods than the three months remaining in the IFPP period. In late February and early March, UPC may not have obtained actual fuel and purchased power figures for February, but its employees knew or should have known during February from their day-to-day trading experience about the wide discrepancy between the previously forecast figures and actual prices.

If the Company had filed for immediate recovery sooner, it is possible that less interest would have accrued on the under-collection than ratepayers are now being asked to pay. In addition, if the Company had clearly said during the Phase III hearings in March that the Company was not prepared to carry a \$7 million under-collection and that it would have to seek

immediate recovery unless the updated forecast proved to be suddenly and completely wrong (and giving us plausible reasons why it might be wrong), the reasonableness of the Company's request would be less subject to challenge. Also, the Company's continued emphasis on a restructuring rate path that included a deferral of significant costs resulted in giving consumers a misleading impression of the likely result of the Company's restructuring proposal.

In terms of the other factors we are obliged to consider, we are not persuaded by UES' customer "price signals" rationale for accelerated collection. While price signals are indeed important to customers, they must be portrayed in the proper context. Prices serve as signals when they provide consumers with the information and motivation to respond to changes in scarcity. Prices signal changes in scarcity and needed changes in behavior as well as provide incentives for customers to alter their consumption. Ideally, current prices should reflect their underlying costs. Here, UES' customers are asked to pay for consumption that already occurred in a period of increased scarcity and increased underlying costs, yet the Company took no action to inform them that their then-current level of consumption would likely lead to future increased bills.

Further, the Phase II Settlement Agreement, and UES' several public pronouncements about future rate paths, contained clear "price signals" linking restructuring with a planned decrease in rates on May 1, 2003, achieved partly through the use of a one year deferral on a FAC-PPAC under-collection. Those price signals are at odds with the signals the Company now wishes to send. Under these circumstances, we are concerned that sending new, contradictory price signals will exacerbate customer confusion.

We observe that UES customers can take advantage of UES' SCC price signals in only a limited way. They cannot avoid paying the additional SCC charges by choosing a competitive supplier. Because the SCC is paid by all distribution customers, the only way for them to try to minimize the SCC they pay is to reduce their consumption of electricity. Even so, while some customers may reduce consumption to avoid the increased SCC, we would expect UES to pursue recovery of any uncollected amount, thus potentially redistributing the cost burden to a different set of customers at an even later point in time.

Likewise, the Company's equity-efficiency rationale for immediate recovery over a one-year period is unpersuasive. We are not inclined to give it any more weight now than the

Company did when it executed the Phase II Settlement Agreement, simply because the under-collection is larger than expected.

Next, we consider the impact on customers if we grant the Company's request and the impact on the Company if we deny it. On an overall basis, UES' average rates increased 5.73 percent on May 1, 2003 as a result of our Phase III decision, *see Unitil Energy Systems, Inc.*, Order No. 24,139 (March 14, 2003). According to the Company, granting the Company's current request will result in another rate increase of 6.74 percent on average over the rates approved for effect on May 1, 2003, and communicated to customers, or a total increase of 12.86 percent compared to December 1 rates. See Exhibit 2.

Due to the approved design of UES' rates, the average increases affect customer classes in different ways. For example, a residential customer using 500 kWh per month experienced a 4.68 percent bill increase on May 1, 2003 compared to the rate in effect on December 1, 2002, or in dollar terms, \$54.98 compared to \$52.52. If the current request for a \$0.00696 per kWh increase is granted, that customer would now see an additional increase of 6.33 percent, or \$3.48 per month. Taken together with the May 1 increase, this typical residential customer would see a combined increase of \$5.94 per month or 11.31 percent over rates that were in effect on April 30, 2003.

The Company's G-1, large commercial and industrial customers, would experience considerably larger increases depending on their usage. Including both the rate increases which took effect on May 1 and the requested adjustment sought in this docket, these increases range from 7.6 percent to 19.8 percent, with all but four G-1 customers receiving double digit percentage increases. In fact, 73.6 percent of the G-1 customers are expected to see rate increases of 16 percent or more. The real impact is clearly seen when actual numbers are used. The 19.8 percent increase means one customer will face a monthly increase of over \$27,000. Exhibit 26 breaks down G-1 customers according to the expected percentage increase in their bills, and shows that the largest monetary impact is felt by a customer with a 19.5 percent increase, which represents an increase of \$28,125.08 per month over that customer's current bill.

The Company claims that it will suffer adverse financial consequences if collection is deferred and spread out over more than one year. The Company described its belief that deferring certain amounts for twelve months and/or extending the recovery period to eighteen or twenty-four months would put the Company in a position where it "would experience deterioration in its financial flexibility and credit quality." Specifically, UES projected that an eighteen-month recovery period would

result in a November 2003 peak short-term debt balance of \$22 million, leaving it no "cushion for unplanned contingencies" in relation to its existing, temporary \$22 million short-term debt borrowing limit. Similarly, it projected that a twenty-four month recovery period would result in peak borrowings of \$22.5 million, which would necessitate either a request to increase its short-term debt borrowing limit or a reduction in cash expenditures which would affect its utility operations.

On the issue of deferrals, UES posited that deferrals result in "less accurate price signals" for customers and would strain UES' short-term borrowings. We have previously addressed the price signals rationale and we do not further address it here.

In past electric restructuring proceedings, stranded costs, including previously unrecovered fuel and purchased power costs, were assigned recovery periods that differed greatly from the recovery period that would have been employed prior to restructuring. By way of example, Public Service Company of New Hampshire's (PSNH) previously unrecovered fuel and purchased power costs of \$209 million are included in its stranded cost recovery charge. Those costs are being amortized over a twelve-year period with the potential that some of those costs could be at risk of non-collection at a certain date in the future or possibly recovered before that date. Thus, in the PSNH

settlement, price signals and recovery periods for stranded costs are not linked.

Regarding an extended recovery period, we note that in response to a request from Commission Staff UES filed on May 30, 2003 a supplemental response to record request number 11 which included two additional months of actual amounts as well as corrections and revised estimates. That supplemental response gives us a better foundation from which to examine various alternatives that will bridge the gap between the prior plan to defer collection of the under-collection and UES' request to recover the entire under-collection over a twelve-month period.

Taking into account all the factors described above, we will allow UES to revise its SCC such that it permits the recovery of UES' \$8,555,838 million in uncollected fuel and purchased power balances through a uniform per kWh rate over a twenty-two month period, effective July 1, 2003 on a service rendered basis. This approach balances the interests of both UES and its customers. A twenty-two month recovery period will preserve the minimum coverage ratio (earnings available for interest charge). Further, a twenty two month period should reduce customer confusion because the end date for the recovery period will coincide with the originally intended end date. In addition, extending the recovery period by ten months moderates bill impacts. For example, a typical 500 kWh residential

customer's bill would increase by \$1.94 per month instead of \$3.48 per month.

The financial effects of this approach benefit the Company also. We will allow UES to recover its full \$8,555,838 balance, and with minimal delay. Based on responses to our record requests and a portion of Exhibit 34 as filed on June 2, 2003, we expect the extension to UES' proposed recovery period to decrease its projected receipts by approximately \$324,000 per month during the initial twelve-month period. At the same time, this outcome ensures that UES' interest coverage ratios remain sound. We further find that this outcome does not impair the Company's ability to manage its cash flow within reasonable short term debt limits. Overall, we find that a twenty-two month recovery period, commencing July 1, 2003, should deliver a superior outcome to the approach sought by the Company and offers a proper balancing of competing interests.

Finally, with respect to the interest rate that UES seeks to charge on its under-recovered balances, the Company testified that it had intended for interest at the prime rate to accrue on the under-collection during the deferral period. According to the Company, the authority for accruing interest is found in the SCC tariff page, First Revised Page 70, which states that "[t]he SCC shall be established annually based on a forecast of includable costs, and shall also include a full

reconciliation with interest for any over- or under-recoveries occurring in prior years(s).” See Tr. at 95-100. The express terms of the tariff, however, do not clearly establish the Company’s right to interest on deferred, under-collected IFPP balances transferred from the IFPP account on May 1, 2003. Nor does any portion of the under-collection show up as a beginning balance in the SCC.

We note that Exhibit 34, and specifically the responses to Record Requests 3, 7 and 9, confirm our expectation that UES’ offer, even at 2%, is not magnanimous. During the twelve months ending December 31, 2002, UES’ and its predecessors’ average interest rate on their short term borrowings was 2.02 percent. Also, in its own analysis, UES applied a then-current interest rate of 1.95 percent to assess its interest coverage in accordance with its indenture. See Exhibit 34, Company’s Response to Data Requests-Set Two, Requests No. 73 and 75. The Company presented additional evidence showing that, overall, UES has experienced declining average interest rates reflective of other short-term interest rates in the market. According to the Company’s response to Record Request 3, the average interest rate incurred by UES for the four months ended April 30, 2003 was 1.84 percent and the average short-term interest rate on May 21, 2003 was 1.85 percent. Since that time, we note that short-term market rates

dropped again.<sup>10</sup> Consequently, we believe it is appropriate to establish an interest rate more reflective of current interest rates in the market. Therefore, we will allow UES to recover carrying costs at 1.85 percent per year on the unrecovered portion of the \$8,555,838 net under-collection beginning on July 1, 2003. We direct UES to compute the appropriate SCC rate reflecting the 1.85 percent carrying cost rate, and file it with us, along with the supporting calculations, as soon as possible. We further direct the Company to work with the Commission's Consumers Affairs staff to develop an appropriate notice to customers communicating the changes in rates.

**B. Pending Motions For Protective Order**

As explained at the May 21 hearing, the Company is seeking confidentiality for (i) salary information pertaining to the employees terminated as part of the internal UES reorganization carried out in January 2003; (ii) UPC April 2003 short term energy trading information, for a limited time until it is treated as public information by FERC policy; (iii) the details of the amounts of short term borrowings by UES and the applicable interest rates; and (iv) confidential business and personnel information of a strategic nature relating to UES. No party objected to these requests, as clarified.

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<sup>10</sup> On June 25, 2003, the Federal Reserve lowered its target for the federal funds rate by 25 basis points to 1 percent and the discount rate by 25 basis points to 2 percent.

The New Hampshire Right-to-Know Law provides each citizen with the right to inspect all public records in the possession of the Commission. See RSA 91-A:4, I. The statute contains an exception for "confidential, commercial or financial information." RSA 91-A:5, IV. The case law interpreting whether information is considered confidential requires an objective test; it is not based on the subjective expectations of the party generating the information. See *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 NH 540 (1997). "Furthermore, the asserted private confidential, commercial, or financial interest must be balanced against the public's interest in disclosure, . . . since these categorical exemptions mean not that the information is *per se* exempt, but rather that it is sufficiently private that it must be balanced against the public's interest in disclosure." *Id.*, at 553 (citations omitted).

We have reviewed the requests for confidential treatment and protective orders filed with respect to this phase of the proceeding and find that the Company has provided credible arguments as to the commercial and financial sensitivity of the information for which protection is sought.

In balancing the interests for and against public disclosure of the information for which confidential treatment is sought, we are persuaded at this time that the interest of

the UES ratepayers in non-disclosure outweighs the public's interest in obtaining access to the information. In light of the fact that the salary information at issue relates primarily to people who were not upper management and who are no longer with the Company, we agree that the salary information should be treated confidentially. We will therefore grant the motions, as clarified by UES. Consistent with our practice, the protective treatment provisions of this Order are subject to the on-going authority of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider the protective order in light of RSA 91-A, should circumstances so warrant.

**Based upon the foregoing, it is hereby**

**ORDERED**, that UES shall be allowed to collect the net \$8,555,838 fuel and purchased power under-collection over a twenty-two month period on a service rendered basis beginning on July 1, 2003, with interest at 1.85 percent per year on the unrecovered portion of the \$8,555,838 under-collection beginning on July 1, 2003; and it is

**FURTHER ORDERED**, that UES is directed to compute the appropriate rate, and file it with the Commission, along with the supporting calculations and revised tariff page, as soon as possible; and it is

**FURTHER ORDERED,** that UES is directed work with the Commission's Consumers Affairs staff to develop an appropriate notice to customers communicating the changes in rates; and it is

**FURTHER ORDERED,** that the motions for protective order filed on April 17, April 24 and May 15, 2003 as clarified at the May 21, 2003 hearing are granted, subject to the on-going authority of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider the protective order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this second day of July, 2003.

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Thomas B. Getz  
Chairman

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Susan S. Geiger  
Commissioner

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Nancy Brockway  
Commissioner

Attested by:

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Claire D. DiCicco  
Assistant Secretary